IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH.

FAO No . 40 of 1989
DATE OF DECISION : 13 -9-2006

Sant Lal … APPELLANT.

Sanjay Yadav & others … RESPONDENTS

CORAM:- HON'BLE MR. JUSTICE ARVIND KUMAR

Present: None for the appellants

Ms. Karnica Bhurjee, Advocate,
for Mr. L.M.Suri, Sr. Advocate
for respondent No. 2-insurance company.

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JUDGMENT:

This is an appeal by Sant Lal, driver of the offending truck, against award dated 1.12.1988 passed by the Motor Accident Claims Tribunal, Bhiwani, whereby he has been ordered to pay compensation of Rs.one lac on account of causing injuries to claimant Sanjay Yadav (respondent No.1 herein) by his truck bearing No.HYB- 1195.

Briefly, the facts of the case are that on 8.8.1987 Sanjay Yadav, claimant was going to school sitting on the carrier of a cycle being driven by Amar Nath. When they crossed 'T' Point in Circular Road, Sant Lal (appellant herein) came driving truck No.HYB-1195 in a rash and negligent manner and struck the same into the cycle, due to which Sanjay Yadav was thrown on the road and the truck crossed over his leg as a result of which he sustained multiple injuries. An FIR came to be registered against Sant Lal, driver of the offending truck, under Section 279/337 IPC. Due to the accident, the leg of Sanjay Yadav got completely smashed. G.L.Yadav, father of Sanjay

Yadav, took him to Medical College, Rohtak for treatment. Thereafter, Sanjay Yadav filed petition claiming compensation.

Upon notice of the claim petition, Sant Lal (respondent No.1 therein) filed his written statement inter-alia contending that he did not cause the accident and that a false case had been registered against him. He pleaded that his truck is hypothecated with respondent no.3-bank who was got the truck insured. Respondent No.2, namely, insurance company, in its written statement took up the stand that since Sant Lal, driver of the offending truck, was not possessed of a valid driving licence, it is not liable to pay compensation.

After issues were framed by the Tribunal, the parties led their respective evidence in support thereto.

The learned Tribunal on appreciation of evidence so led by the parties before it, came to the conclusion that it was respondent No.1, Sant Lal, i.e. driver of the truck, who is at fault and since he did not not possess a valid driving licence at the time of accident, he is solely liable to pay compensation to the claimant, which was awarded at Rs.one lakh along with interest at the rate of 12 per cent per annum from the date of claim petition till realization. Out of this amount, Rs.26,000/- was to be paid to G.L.Yadav, father of claimant Sanjay Yadav, while the remaining amount was ordered to be deposited in nationalised bank's fixed deposit in the name of claimant Sanjay Yadav payable to him on attaining majority. As regards respondent No.2, insurance company, it was exonerated of its liability to pay compensation. This is how the present appeal has been filed by Sant Lal, respondent No.1, challenging the said award.

It may be apt to mention here that the present appeal was dismissed by this Court qua respondent No.1, namely, claimant Sanjay Yadav while it was admitted qua respondents 2 and 3 i.e. insurance company and the bank.

Counsel for the respondent-insurance company has been heard.

No one has put in appearance for and on behalf of the appellant-Sant Lal.

Appellant, Sant Lal, has questioned the liability of payment of compensation. He was driver-cum-owner of truck No.HYB-1195. Admittedly, he had a driving licence only for the period from 29.6.1973 to

28.6.1976. The accident had taken place on 8.8.1987. Concededly, he had not got his driving licence renewed. Thus, on the date of accident, he was not holding a valid driving licence. The condition in the policy is very clear. It stipulates that a person must hold a valid driving licence and is not disqualified from holding or obtaining such licence. No doubt, there is breach in the condition of the policy but no evidence has been led by the insurance company that appellant, Sant Lal, was ever disqualified from obtaining or holding a driving licence. Under such circumstances, as has been held by the Supreme Court in National Insurance Company Limited v. Swaran Singh, 2004 ACJ 1 (SC), the insurance company shall not be allowed to avoid its liability to pay compensation mainly on technical ground of breach of conditions by the driver of the offending vehicle. Thus, the finding arrived at by the Tribunal exonerating the insurance company in total cannot be sustained in view of the dicta of the Supreme Court in Swaran Singh's case (supra). In view of the afore-stated fact, the insurance company shall pay compensation with interest to the claimant so awarded by the Tribunal and may recover the amount paid by them along with interest from the appellant by filing an appropriate execution proceedings before the Motor Accident Claims Tribunal.

In view of the discussion above, impugned award dated 1.12.1988 is modified in the manner indicated above.

The appeal stands disposed of accordingly. No costs.

September 13, 2006 (ARVIND KUMAR)
JS JUDGE